

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

First Appeal for Order No. 1049 of 2001
(Old No. 823 of 1997)

The New India Assurance Company Ltd.
Through its Assistant Manager (Legal Cell)
Mahatma Gandhi Marg
Civil Lines, Allahabad

Vs

....Appellant

1. Smt. Saroj Rawat
Widow of Late Sri Dinesh Singh Rawat
2. Master Navneet Singh
3. Master Parveen Singh
4. Master Sudhir Singh
respondents No. 2 to 4 are Sons of
Late Sri Dinesh Singh Rawat through
their legal & natural guardian
Smt. Saroj Singh - Mother
5. Sri Manwar Singh
S/o Bhagwan Singh
(Father of the deceased)
6. Smt. Gayatri Devi W/o Ranwar Singh
(Mother of the deceased)
All R/o Village Patoria
P.O. Kulmauri, Lansdown
Pauri Garhwal

..... Respondents

Sri T.A. Khan, learned counsel for the appellant

Sri G. Upadhyay, holding brief of Sri B.D. Upadhyay, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by the New India Assurance Company Ltd. against the Judgment and award dated 01.07.1997 passed by M.A.C.T., Pauri Garhwal in M.A.C.P. No. 75 of 1995 Smt. Saroj Rawat & others Vs New India Assurance Company Ltd.

2. Brief facts of the case are that on 21.06.1995 at about 09:00 p.m. Jeep No. UP07D 1077 was being driven in a very rash and negligent manner due to which the accident was occurred. In this accident Dinesh Singh Rawat sustained

grievous injuries. He immediately after the accident admitted to the Government Combined Hospital, Kotdwar from where he was referred to Meerut and thereafter referred to Delhi for better treatment but due to serious injuries sustained by him, he was declared dead at Delhi on 30.06.1995.

3. At the time of the accident Dinesh Singh Rawat was employed as teacher in the Education Department and was earning Rs. 3,268/- per month from his employment. Besides it, he was also privately teaching students and used to earn about Rs. 1,000/- per month. Out of this amount he used to spend about Rs. 2100/- per month on his family. The claimant filed the claim petition for compensation.

4. Opposite parties have filed their written statement. It has not been disputed that the vehicle was insured with New India Assurance Company but the contention of the owner of the vehicle was that claim petition has wrongly been filed and the allegations made therein are wrong facts.

5. On the basis of the pleadings of the parties, following issues were framed by the tribunal concerned:-

1. Whether on 21.06.1995, the accident took place due to rash and negligent driving of the driver of offending vehicle?
2. Whether the death of Dinesh Rawat was caused due to the said accident?
3. To what amount of compensation, if any, the claimants are entitled to get, and against whom?

6. Both the parties adduced the evidence in support of their cases. Thereafter the tribunal decreed the claim petition for an amount of Rs. 1,50,000/- in favour of the claimants.

7. Feeling aggrieved by the aforesaid judgment and award the Insurance Company filed this appeal before the Allahabad High Court, which has been transferred to this Court after creation of separate State.

8. Heard Sri T.A. Khan, learned counsel for the appellant, Sri G. Upadhyay, holding brief of Sri B.D. Upadhyay, learned counsel for the respondents and perused the record.

9. Learned counsel for the appellant has argued that the driver of the offending vehicle was not having effective valid driving licence at the time of the accident.

10. It has been submitted by him that the deceased was not an authorized driver and was not having valid driving licence at the time of the accident but was driving the vehicle without having any authorization for driving the same.

11. The record reveals that the Insurance Company neither pressed this issue before the Tribunal nor has adduced any evidence in order to establish the pleading raised by the Insurance Company.

12. It was the burden of the Insurance Company to adduce proper and adequate evidence in order to establish that the deceased was not authorized to drive the offending vehicle at the time of the accident and he in fact, in the absence of the authorized driver of the vehicle in question took the steering in his hand and dashed the vehicle and in the same process he died on account of the injuries sustained by him.

13. The pleadings raised by the learned counsel for the appellant relates to the factual aspect of the matter which has not been established by the appellant by any cogent or reliable evidence before the Tribunal concerned. Once the plea has been raised by the Insurance Company that the deceased was not having valid and defective driving licence and took the starring of the vehicle in the absence of the authorized driver then it was the burden of the Insurance Company to establish the plea taken by him. However, the Tribunal on the basis of the strength of the evidence adduced before it has decided the claim petition and has observed clearly therein that Dinesh Singh Rawat died in the accident and at the time of the accident, the offending vehicle was being driven rashly and negligently by its driver and on account of the same, Dinesh Singh Rawat sustained grievous injuries and he subsequently succumbed to injuries.

14. Accordingly, the arguments raised by the learned counsel for the appellant is not tenable in the light of the evidence available on record.

15. The appeal lacks merit and is liable to be dismissed.

16. Accordingly, the appeal is dismissed. The impugned judgment and award dated 01.07.1997 passed by M.A.C.T., Pauri Garhwal in M.A.C.P. No. 75 of 1995 Smt. Saroj Rawat & others Vs New India Assurance Company Ltd. is hereby confirmed.

(B.C. Kandpal, J.)

12.10.2006
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